



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: Dallas, Texas

Date:

AUG 31 2004

IN RE: Applicant:

[REDACTED]

APPLICATION:

Application for Status as a Permanent Resident pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), amended by LIFE Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the Dallas District Office. If your appeal was sustained, or if the matter was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application for permanent resident status under the Legal Immigration Family Equity (LIFE) Act was denied by the District Director in Dallas, Texas. It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The district director concluded that the applicant failed to establish that he resided in the United States in a continuous unlawful status from before January 1, 1982 through May 4, 1988, as required by 8 C.F.R. § 245a.11(b). In particular, the district director found that the applicant was absent from the United States from February 1986 to July 1986, exceeding the 45-day maximum specified in 8 C.F.R. § 245a.15(c)(1), without demonstrating that the extended absence was due to an "emergent reason" preventing an earlier return to the United States.

On appeal, the applicant submitted a statement asserting that the reason for his five-month absence from February to July 1986 "was because I was engaged and my wedding was to be celebrated in those days. I had to be in Mexico to prepare everything for my wedding."

An applicant for permanent resident status under section 1104 of the LIFE Act must establish that before October 1, 2000, he or she filed a written claim with the Attorney General for class membership in one of the following legalization class-action lawsuits: *Catholic Social Services, Inc. v. Meese*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("CSS"), *League of United Latin American Citizens v. INS*, vacated sub nom. *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) ("LULAC"), or *Zambrano v. INS*, vacated sub nom. *Immigration and Naturalization Service v. Zambrano*, 509 U.S. 918 (1993) ("Zambrano"). See section 1104(b) of the LIFE Act and 8 C.F.R. § 245a.10. The record indicates that the applicant filed a timely claim for class membership in CSS.

To be eligible for adjustment to permanent resident status under the LIFE Act, however, the applicant must also establish that he entered the United States before January 1, 1982 and resided in this country continuously in an unlawful status through May 4, 1988. See section 1104(c)(2)(B)(i) of the LIFE Act and 8 C.F.R. § 245a.11(b). The "continuous unlawful residence" requirement is further defined in 8 C.F.R. § 245a.15(c)(1), which provides as follows:

An alien shall be regarded as having resided continuously in the United States if no single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982, and May 4, 1988, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed.

The circumstances described by the applicant in the statement he submitted on appeal do not constitute "emergent reasons" within the meaning of the regulation. The reason for his extended absence from the United States in 1986 – wedding preparations in Mexico – was neither unforeseen nor outside of the applicant's control. To the contrary, the duration of the applicant's absence from the United States was a matter of personal choice. Accordingly, the applicant's five-month stay in Mexico in 1986 interrupted his continuous residence in the United States.

The AAO also notes that the applicant testified under oath on August 6, 1993, in an interview concerning his claim for class membership in CSS, that he left the United States in February 1986 and did not return until July 1988 – an absence of well over two years. The district director did not refer to that testimony, which casts doubt on the veracity of the statement the applicant submitted in the instant proceeding ten years later and further weakens his case that he was a continuous resident of the United States for the time period required under the LIFE Act.

For the reasons discussed above, the applicant has failed to establish that he entered the United States before January 1, 1982 and resided continuously in the United States in an unlawful status from before January 1, 1982 through May 4, 1988, as required by section 1104(c)(2)(B)(i) of the LIFE Act, 8 C.F.R. § 245a.11(b) and 8 C.F.R. § 245a.15(c)(1).

Accordingly, the applicant is ineligible for permanent resident status under section 1104 of the LIFE Act.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.